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No. 88-994

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY,
Petitioner,

v.

L. LEE BEARDSLY, *et al.*,
Respondents.

On Petition for Certiorari to the United States Court of Appeals for the Eighth Circuit

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REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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The petition for certiorari presents the question whether the six-month limitations period under *DelCostello* v. *Teamsters*, 462 U.S. 151 (1983), for "hybrid" actions by employees against employers and unions should be "borrowed" in actions to compel labor arbitration. The actions here were brought against petitioner Chicago & North Western Company ("C&NW") and the defendant unions more than six months—and in many cases, several years—after the events that gave rise to the claims of the individual plaintiffs, respondents herein. The court of appeals agreed with C&NW and the unions that the individual plaintiffs' claims could not be heard in

federal court because, among other things, they were time-barred under the *DelCostello* limitations rule, but rejected the argument that an order compelling arbitration of those claims was likewise time-barred. The court then directed the district court to enter an order submitting thee claims to arbitration, subject only to the defense of laches.

In their brief in opposition, the individual plaintiffs contend that the question presented is not squarely presented. That is simply incorrect.

First, the brief in opposition (at 8) contends that the court below "did not determine that laches governed the bringing of this *lawsuit* * * * but instead determined that laches could limit the availability of *arbitration.*" (Original emphasis.) But the plaintiffs concede that C&NW and the unions claimed from the beginning of the litigation that the plaintiffs' action was barred by the six-month limitation under *DelCostello.* While the court below accepted that defense with respect to the unfair representation claims, it rejected it with respect to the availabiliy of arbitration, and directed the district court to enter an order sending the claims to arbitration. Thus, the petition for certiorari squarely presents the question whether a suit to compel labor arbitration is governed by the *DelCostello* limitations period or by laches.[1]

Second, the brief in opposition contends (at 10) that "because the lower court issued what amounted to a declaratory judgment," the petition for certiorari regarding the application of *DelCostello* to suits to compel arbitration "is misdirected." But the suggestion that the

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[1] Despite the plaintiffs' contention (Br. Opp. at 19-20) that this case presents unique factual circumstances that should militate against a grant of certiorari, the facts here cleanly present a legal question that can arise wherever an order for labor arbitration is sought, and that has in fact arisen in a number of court of appeals cases. See Petition for Certiorari at 9-10.

issue—whether the six-month limitation applies to suits to compel arbitration—can be side-stepped by characterizing the order in this case as "what amounts to a declaratory judgment" is simply frivolous. If an order to submit the claims to arbitration (which is what the court of appeals directed the district court to enter) would be barred by the six-month statute, a "declaratory judgment" that the claims must be submitted to arbitration is likewise time-barred.

CONCLUSION

The Petition for Certiorari should be granted.

Respectfully submitted,

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